

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

HITOSHI OMBE,

Plaintiff,

v.

1:16-cv-01114-RB-LF

GEORGE COOK, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Plaintiff's Motion to Request to Resume the Case, Doc. 21, filed February 9, 2017, on Plaintiff's Motion to Request to Correct Filing Errors, Doc. 22, filed February 9, 2017, and on Plaintiff's Motion to Request to File and Seal, Doc. 23, filed February 13, 2017.

Motion to Resume the Case

After Plaintiff filed his Complaint, the Court ordered Plaintiff to either pay the filing fee or file a motion to proceed *in forma pauperis*. See Order to Cure Deficiency, Doc. 4, filed October 4, 2016. Plaintiff then filed his Sealed Response to Order and Motion to Request Hold or Suspend the Case, Doc. 5, filed October 27, 2017. The Court extended the deadline for complying with the Court's Order to Cure Deficiency, but did not stay litigation. See Doc. 6, filed October 28, 2016. Plaintiff's Motion to Resume the Case states he is "ready to resume the case" and requests that the "suspension of the case is to be ended on 02/10/17." Doc. 21. Because the Court has not stayed litigation of this case, the Court will deny Plaintiff's Motion to Resume the Case as moot.

Motion to Correct Filing Errors

Plaintiff seeks to: (i) seal his Motion to Correct Filing Errors; (ii) seal portions of

Document 9 and Documents 10, 19, and 20; and (iii) withdraw Documents 14-17.

The Court will deny Plaintiff's request to seal his Motion to Correct Filing Errors. Courts have discretion to allow the sealing of documents if the public's right of access is outweighed by other interests. *See JetAway Aviation, LLC v. Bd. of Cnty. Comm'rs*, 754 F.3d 824, 826 (10th Cir.2014) (per curiam). "To overcome [the] presumption against sealing, the party seeking to seal records must articulate a real and substantial interest that justifies depriving the public of access to the records that inform our decision-making process." *Id.* (internal quotation marks omitted). Plaintiff has not articulated a real and substantial interest that justifies sealing his Motion to Correct Filing Errors; he states only that "this motion is necessary only for relevant court personnel." Doc. 22 at 2.

Plaintiff seeks to seal portions of Document 9 and Documents 10, 19, and 20, because they contain "very personal information" and "only relevant court personnel needs to know." Doc. 22 at 2-3. The portions of Document 9 which Plaintiff seeks to seal contain Plaintiff's medical records.¹ The Court will order the Clerk to seal Document 9. *See Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey*, 663 F.3d 1124, 1135 (10th Cir. 2011) (party seeking leave to file documents under seal based on the inclusion of medical records overcame presumption that public had right of access to judicial records).

Documents 10, 19 and 20 are Plaintiff's Application to Proceed in District Court without Prepaying Fees or Costs, a correction to the Application, and an explanatory note regarding the Application. Those documents contain information regarding Plaintiff's income and financial resources, and general statements regarding his mental health which are less specific than

¹ Document 9 is Plaintiff's Amended Complaint, filed December 27, 2017. Plaintiff has since filed his Second Amended Complaint, Doc. 26, filed March 28, 2017.

statements about his mental health he has made in other documents he has filed unsealed. *See* Complaint at 4, Doc. 1, filed October 7, 2016; Special Demand to the Court at 1-2, Doc. 3, filed October 7, 2016. Plaintiff has not articulated a real and substantial interest that justifies sealing his Application to proceed *in forma pauperis* and the related correction and explanatory note. *See JetAway Aviation, LLC v. Bd. of Cnty. Comm'rs*, 754 F.3d 824, 826 (10th Cir.2014). The Court will not seal Documents 10, 19 and 20.

Plaintiff seeks to withdraw Documents 14-17 because they are “no longer necessary.” Doc. 22 at 2-3. Document 14 “is a cover sheet of Document 15.” Document 15 explains why Plaintiff made some filing errors. Plaintiff states Document 15 is no longer necessary due to the filing of his Motion to Correct Filing Errors and his meeting with Case Management Supervisor Alonzo Medina. Document 17 “is a cover sheet of Document 16.” Document 16 is a List of Attachments, including the attachments, for Document 15. The Court will allow Plaintiff to withdraw Documents 14-17. *See* D.N.M.LR-Civ. 7.7 (“A party may withdraw a document from consideration by the Court by filing and serving a notice of withdrawal which specifically identifies the document being withdrawn. Withdrawal requires consent of all other parties² or consent of the Court”).

Motion to File and Seal

Plaintiff seeks to: (i) file an “Additional Explanation” related to his Application to proceed *in forma pauperis*; and (ii) seal the Motion which has Plaintiff’s Additional Explanation attached.

² The other parties in this case have not been served process and have not entered appearances in this case. Because Plaintiff is proceeding *in forma pauperis*, the Court will screen Plaintiff’s Second Amended Complaint pursuant to 28 U.S.C. 1915(e)(2) to determine whether it states a claim. The Court will order service if it determines the Second Amended Complaint states a claim. *See* Doc. 24 at 8, filed March 7, 2017.

The Court will grant Plaintiff's Motion to File and Seal because it includes personal health information about Plaintiff. *See Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey*, 663 F.3d 1124, 1135 (10th Cir. 2011).

IT IS ORDERED that:

(i) Plaintiff's Motion to Request to Resume the Case, Doc. 21, filed February 9, 2017, is **DENIED** as moot;

(ii) Plaintiff's Motion to Request to Correct Filing Errors, Doc. 22, filed February 9, 2017, is **GRANTED in part**;

(iii) The Clerk shall seal Plaintiff's Amended Complaint, Doc. 9, filed December 27, 2016;

(iv) Plaintiff's Motion to Request to File and Seal, Doc. 23, filed February 13, 2017, is **GRANTED**; and

(v) The Clerk shall seal Plaintiff's Motion to Request to File and Seal, Doc. 23, filed February 13, 2017.


UNITED STATES MAGISTRATE JUDGE